

Office of the Secretary
Federal Communications Commission
Washington D.C. 20554

NOV 20 1995

FCC

Re: CC Docket Number 95-155, Vanity Numbers

November 14, 1995

Dear Commisioners,

DOCKET FILE COPY ORIGINAL

This letter addresses the issue of whether Vanity Numbers should be "carried-over" from the existing 1-800 prefix to the new 1-888 prefix. I argue that the Numbers should almost never be carried-over because it is unnecessary.

PART ONE: "The Real Interest is in the Name, not in the Number."

Vanity Numbers in most cases are actually "Vanity Names." Vanity Names are numbers that spell certain words that have value to the "Holder."

Many companies have written the FCC, citing reasons why a 1-800 Vanity Name or Number should be carried-over to the 1-888 prefix.

This letter proposes a method that protects the rights of current Holders of certain Vanity Names, while eliminating need for a Right of First Refusal or other method to carry-over the same Vanity Name to a new toll-free prefix.

Vanity Names are perceived to have certain value to the Holder, such as 1-800 THE CARD. Usually it is the Name that is important and promoted, while the number itself is often unimportant.

The core issue then is how to protect the **Name** (and to what degree), **not the Number**.

Many of the seven-digit numbers can spell different words. One number therefore can have value to more than one company. Consider the identical numbers below:

1-800 **The CARD** is used by American Express.
843 2 2 73

1-888 **The BASF** could be of interest to BASF Corp.
843 2 2 73

If there was a way to protect the Name, then the issuance of the same seven-digit Number with the new toll-free prefix to the current Holder would be redundant and arguably unfair to a third party seeking that same Number for purposes of associating it with a different Name.

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In the case above, BASF could be precluded from using the Number, even though Federal Express does not actually need the new prefix and Number for any reason such as lack of capacity to the phone lines.

The argument for the Right of First Refusal is not one of capacity. It is an argument of good-will, investment, unfair competition and confusion among the public. If the Name is adequately protected, then the actual need to carry-over a "Vanity Number" from the 1-800 prefix to the 1-888 prefix is significantly reduced, if not eliminated.

Vanity Names can be protected. The last part of this letter explores how can current Holders of Vanity Names be protected, and to what degree a particular Name deserves protection.

The key is to protect a current Holder without unduly tying up a string of numerous numbers, and without being unfair to third parties with legitimate interests in the same Number.

PART TWO : DEFINITIONS

1. Vanity Name: A Name derived from an existing toll-free number, which enjoys some level of "protection," if any, under FCC Rules, and is protected under contract law between the subscribers and the carriers.
2. Holder: A company, person or entity that has or "holds" an existing Vanity Number.
3. Applicant: A company, person or entity that is applying for any toll-free Number.
4. Absolute Priority Vanity Number: A Vanity Number where the Number itself is absolutely protected and carried-over from the 1-800 Prefix to the all new toll-free prefixes.
4. High Priority Vanity Name: A Vanity Number where the Name is absolutely protected in all SIC codes, but the Number in a new toll-free prefix is available to third parties under restricted conditions.
5. Priority Vanity Names: A Vanity Number where the Name is protected within a broad scope of SIC codes, but is not protected in unrelated SIC codes and may be used along with the Number by an applicant who shows "Rights" associated with that Number and Name.
6. Low-Priority Names: A Vanity Name which is protected only within the narrow range of its specific SIC code.
7. Non-Priority Names: Name which is subject to transfer from the Holder to an applicant who shows superior Rights in the Name.

PART THREE: LEVELS OF PROTECTION

The level of protection is derived from three objective criteria: Volume of calls, SIC Codes and Registered trade marks, service marks and trade names.

1. Absolute Priority Vanity Number: In rare cases, a Vanity Number can be so important that both the Number and the Name should be absolutely protected and carried-over to all subsequent toll-free prefixes.

Because policy favors protecting a Name rather than the Number, Vanity Numbers that fall into this classification would be very limited. Absolute Priority of a Number would be

granted only when the Holder submitted a compelling argument as to why sole and exclusive rights to the entire Name itself (in all SIC codes) still would not be sufficient to protect the Holder's interest.

Factors that could influence the granting Absolute Priority may be an inordinately high volume of calls combined with reasons related to public health and safety.

2. High Priority Vanity Names: High Priority Names would be names from Vanity Numbers that have special consideration because of an extraordinary high volume of calls.

The high volume would prima facie of public recognition of the Name. Whether the Name is associated with a registered trademark, service mark or trade name is not important because of the volume of calls.

The NAME itself is granted high priority and therefore full-protection against all other parties from using that Name across all SIC codes.

The Number from which the Name is derived, however, would not be carried-over and would remain open to third parties.

A company with a High Priority Name would be given sole and exclusive rights to the Name. However the same company would not be granted the same Vanity Number under the new prefix.

In other words, American Express would be granted the sole right to use the Name "THE CARD," regardless of the toll-free prefix. American Express would have sole right to exclude any and all others from using the word(s) THE CARD in association with any toll-free telephone number. American Express could also submit a list of any words that could be arguably confused with THE CARD, such as THE CARE. Both THE CARD and THE CARE would be names protected within a national register of toll-free Vanity Names..

American Express would not be granted (1-888) 843-2273. (1-888) 843-2273 would remain available for use to a third party, provided that the third party Applicant made certain covenants. The third party who sought the Number would have to promise under contract not use an already Protected Name in a manner. Infringement would be considered breach of contract, and the Number would be revoked by the carrier.

3. Priority Vanity Names: Names associated with a Vanity Number where the volume of calls is not high and not low, and where the Name itself is associated with a registered trademark, service mark or trade name of the Holder would be protected within its greater SIC code.

The moderate volume of calls is prima facie that the Name has not achieved high public recognition. Since other companies may have legitimate and great interests in the same Vanity Name, and may operate in a completely different SIC code, it is in the greater commercial interest that a Name should not be completely reserved by one Holder, unless justified by an extraordinary amount of public recognition and demonstrated by a high volume of calls.

Priority Names would be protected against the use of the same Name in a new toll-free prefix to the extent of its greater SIC Code. In other words, an Applicant could not apply for the Number and Name if it were operating within the same SIC code as the Holder, with one exception described below.

An Applicant in a different SIC would be allowed to use both the Number and Name in a new toll-free prefix, provided that the Applicant showed "Reasonable Want."

Reasonable Want is conclusively implied by the showing of a registered trade mark, service mark or trade name owned by the Applicant that is the same as the Name.

The rationale is that it is unfair that the Holder of a Vanity Name be given exclusive rights to the Name, when the Holder's rights to the name are weak and the Wants of an Applicant are Reasonable.

4. Low-Priority Name: A Name that has a low volume of calls, but is associated with a registered trademark, service mark or trade name would have protection against the use of that Name within its specific SIC code.

5. Non-Priority Names: When a Holder of a Vanity Number or Name has low volume and no registered rights to the Name, the Number is presumed to have low commercial value and would be subject to transfer to an Applicant who showed proof of superior rights, such as with a registered trademark, notwithstanding prior use of the Number.

Vanity Names have evolved from Vanity Numbers, and have become the quasi "marks" of the Holder. Some individuals or entities have realized the value certain numbers, and have reserved Numbers in order to later sell the Number to a company with true, legitimate interests in the Number.

In order to promote legitimate interests in Vanity Numbers, some form of recognition would be given to the owners of Registered marks above those who merely hold a number, having low commercial activity and without having registered marks associated with the Number and Name.

In these cases, Number and Name could be transferred to an Applicant who showed superior rights. A special transfer fee to be paid by the applicant, and a sufficient transition time allowed.

Summary:

	<u>Absolute Priority</u>	<u>High Priority</u>	<u>Priority</u>	<u>Low Priority</u>	<u>Non- Priority</u>
Very High Volume of calls	xx	xx			
Public Interest	xx				
High Volume of calls			xx		
Low volume with registered marks				xx	
Low Volume of calls and no registered marks					xx

PART III: A Procedure for Protection of Existing Vanity Numbers and Application for New Vanity Numbers

Protecting a Name

A Holder of a Vanity Name could protect the Name by having the Name placed in a national register of "Protected and Prioritized Names." Companies wishing to have their Vanity Name "Protected" would have to pay a processing fee and return completed form to their carrier, whom would then fill-in additional information before sending the form and money to the processing agency.

The Holder of a Number and Name would provide key information, including

- a. The seven-digit number.
- b. The Name spelled-out by the number, which is sought for protection.
- c. Proof of any registered marks related to the number, such as a copy of a registered trademark.

The Holder would also pay a one time initiation fee sufficient to cover the costs of processing. The form and money would be sent to the carrier. The carrier would complete the form by disclosing the dollar amount of the bill associated with the Number over a twelve month period. Once the information was processed, the Name would be would "prioritized." Prioritized Names would be published and made accessible to the public.

The forms of protections are outlined below:

1. Absolute Protection of Name and Number
2. Protection of the Name in all SIC codes, but the Number remains available.
3. Protection of the Name within a range of SIC codes, while the Number remains available.
4. Protection of the Name only within a single SIC code.
5. Not protected and subject to transfer to a party who demonstrates bona fide greater rights.

Applying for a New Name

A list of "Vanity Names" would be compiled and put into a national register. The register would be used for reference by the public and by the carriers.

An applicant seeking a Vanity Number and name would be advised as to the availability of both the Number and the Name. If a Name was available, the limitations on use would be disclosed by the carrier to the Applicant.

If the applicant wanted to apply for an available number, the applicant would have to sign a promise not to infringe upon the rights of an existing Holder. The promise would be make to the carrier, and would be enforceable under contract. Forfeiture of the Number would be the remedy for infringement of a Vanity Name.

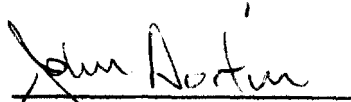
Postscript

If many Vanity Numbers are carried-over from one prefix to another, the public will not distinguish between toll-free prefixes. This lack of distinction between prefixes will have

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adverse effects to all concerned. The amount of wrong numbers will go through the roof. It's to the benefit of all to enforce upon the public's mind that the correct toll-free prefix must be recognized as an integral part of the new toll-free number.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "John Austin", written over a horizontal line.

John Austin
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